

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

LARRY E. REDMON,	:	
	:	NO. 1:08-CV-00594
Plaintiff,	:	
	:	
	:	
v.	:	<b>OPINION AND ORDER</b>
	:	
	:	
COMMISSIONER OF SOCIAL	:	
SECURITY,	:	
	:	
Defendant.	:	

This matter is before the Court on the Magistrate Judge's Report and Recommendation, (doc. 14), Plaintiff's objections thereto (doc. 16), and Defendant's response to Plaintiff's objections (doc. 18). For the reasons indicated herein, the Court ADOPTS the Magistrate Judge's Report and Recommendation in its entirety.

Plaintiff filed his complaint seeking either disability insurance benefits or supplemental social security income on September 11, 2008 (doc. 14). Defendant filed a motion to dismiss the complaint on the basis that the complaint was untimely filed (Id.). In his Report and Recommendation, the Magistrate Judge recommended that Defendant's motion to dismiss be granted and this case be dismissed from the docket of the Court (Id.).

Plaintiff originally sought benefits because of a condition affecting his back and legs (doc. 16). The

Administrative Law Judge denied Plaintiff's claim for benefits on April 22, 2008, and the Appeals Council denied review of Plaintiff's claim on June 24, 2008 (doc. 14). As noted above, Plaintiff filed the instant action on September 11, 2008 (Id.). Defendant moved to dismiss the complaint because, according to the Social Security Act, Plaintiff needed to have filed suit on or before August 28, 2008 (Id., citing 42 U.S.C. §405(g)).

The Magistrate Judge agreed with Defendant's reading of the Act and with the calculation of time (Id.). In response to a request for Plaintiff to show why his case should not be dismissed, Plaintiff submitted medical documentation of treatment and/or evaluation related to left arm pain in December of 2009 and documentation of being scheduled for a prostate biopsy in March 2010 (Id.). The Magistrate Judge noted that Plaintiff had not provided anything demonstrating why he did not comply with the deadline to file suit (Id.). Having found that Plaintiff had not timely filed suit and had not demonstrated a reason why the filing deadline should be extended or equitably tolled, the Magistrate Judge recommended dismissal (Id.).

Plaintiff's objections consist of a generalized statement that he "protest[s] and object[s]" to the dismissal, contending that he has been disabled for years due to problems with his back and legs (doc. 16). Defendant notes that Plaintiff's objections do not provide a justification for him filing the suit beyond the

deadline (doc. 18). Without some circumstances that would justify extending the period for filing, Defendant argues that Plaintiff's case should be dismissed (Id.).

Having reviewed this matter pursuant to 28 U.S.C. §636(b), the Court can find no basis upon which to deny the Magistrate Judge's recommendation, as the Magistrate Judge's interpretation of the law is correct. Therefore, the Court AFFIRMS the Magistrate Judge's Report and Recommendation in its entirety and DISMISSES this case from the docket. However, the Court notes that Plaintiff is not precluded from filing a new claim for benefits based on his current conditions, and such a claim could come to a different resolution.

SO ORDERED.

Dated: June 15, 2010

/s/ S. Arthur Spiegel  
S. Arthur Spiegel  
United States Senior District Judge